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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,493	01/18/2002	Peter Kenneth Seear	U 013833-2	7319

7590

10/20/2003

Ladas & Parry  
26 West 61 Street  
New York, NY 10023

EXAMINER
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KRECK, JOHN J

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/052,493

Applicant(s)

SEEAR ET AL.

Examiner

John Kreck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

The amendment dated 7/17/03 has been entered.

It is noted that applicant submitted a new claim numbered 11. Since there is already is a claim 11 in this application, this claim has been renumbered as 12.

Claims 1-12 are pending.

Claims 6-11 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams (U.S. Patent number 3,114,425). See figure 1.

Adams shows a mining apparatus including a conveyor (3); an auger (57) mining machine positioned adjacent the conveyor to mine material by forming tunnels extending normal to the conveyor and to deliver the mined material to the conveyor at a position spaced from the forward end of the conveyor as called for in claim 1.

With regards to claim 12; the conveyor of Adams also includes means to receive.

***Claim R jections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams.

Adams shows a conveyor pan, but fails to explicitly teach the chain (Adams is silent as to the type of conveyor). Adams also shows the motor and drive assembly, but fails to teach the cradle and boom assembly in the embodiment shown in figure 1.

Chain conveyors are notoriously conventional in mines, because they are durable and efficient.

Adams teaches that a cradle (91) and boom (114) assembly are useful in similar machines (see figure 5), because they simplify the assembly of the auger string.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adams device to have a chain, since chain conveyors are durable and efficient. It also would have been obvious to one of ordinary skill in the art at the time of the invention to have included the cradle and boom assembly as called for in claim 3, in order to simplify the assembly of the auger string.

With regards to claim 4, Adams teaches the pan beneath the auger.

With regards to claim 5, Adams teaches the motor and drive assembly is a first drill head on a first base portion. Adams further teaches the boom assembly transports

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segments between the cradle and drill head. Adams fails to teach the cradle and boom on a second base along with a second drill head. Applicant is reminded that that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. One of ordinary skill in the art would have found it obvious to include a second base portion, in order to improve maneuverability or weight distribution for example. The positioning of the various components on separate base portions would have been obvious based on space considerations, weight distribution, or other design considerations.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams in view of Plumley (U.S. Patent number 5,634,545).

Adams fails to teach the structure of the conveyor beyond the mining machine (the conveyor is only shown in cross section in fig. 1)

Plumley teaches a similar mine conveyor which includes a hopper at its forward end. This allows the conveyor to be loaded efficiently at its end.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adams system to have included a conveyor which includes a hopper at its forward end as called for in claim 2 in order to allow the conveyor to be loaded efficiently at its end.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725.

The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.



John Kreck  
Examiner  
Art Unit 3673

JJK